

RECEIVED

JUN 07 2016

Via Fed-Ex (Overnight)

June 6, 2016

Pesticides & Toxic Substances Branch

Mark Bean
U.S. Environmental Protection Agency - Region II
Pesticides and Toxic Substances Branch
2890 Woodbridge Avenue – MS105
Edison, New Jersey 08837

RE: Freedom of Information Act Request EPA-R2-2016-001966

Dear Mr. Bean:

We represent Saint-Gobain Performance Plastics Corporation (“SGPP”). On May 17, 2016, we received a letter from the United States Environmental Protection Agency (“EPA”) concerning SGPP’s March 7, 2016 letter that provided explanations for why certain portions of documents submitted to the EPA should be considered Confidential Business Information (“CBI”). The EPA’s May 17, 2016 letter requests additional information from SGPP concerning the CBI designations SGPP has asserted. This letter shall respond to the EPA’s most recent requests. The letter will also provide explanations regarding why certain limited information in the written justifications for SGPP’s prior CBI designations in SGPP’s March 7, 2016 letter are CBI.

A. SGPP’s Response to the EPA’s May 17, 2016 Letter

The EPA’s May 17, 2016 letter states, in part:

SGPP’s March 7, 2016 response identified and highlighted and/or bracketed a set of data within the submittals on November 3, 2015; November 6, 2015; November 13, 2015; and December 4, 2015. With respect to the *highlighted information* identified in SGPP’s

March 7, 2016 response, we invite your comments on the following additional points:

- (1) the portions of the information submitted on the aforementioned dates which are alleged to be entitled to confidential treatment;
- (2) whether a business confidentiality claim accompanied the information when it was received by EPA; and
- (3) whether and why disclosure of the information (which you stated in your March 7, 2016 response was information voluntarily submitted information as defined in 2.201(i)) would tend to lessen the availability to EPA of similar information in the future.

(EPA's May 17, 2016 letter at 2) (emphasis added).

SGPP responds as follows:

(1) For the reasons described in SGPP's March 7, 2016 letter to the EPA, SGPP reasserts that all highlighted and/or bracketed portions of the documents attached to SGPP's March 7, 2016 letter (see Documents A thru G) are CBI entitled to confidential treatment.

(2) Yes. When SGPP initially provided the information in question to the EPA on November 3, 2015, November 6, 2015 November 13, 2015 and December 4, 2015, SGPP asserted that the information was CBI. The EPA's letter to Julia DiCorleto, General Manager, Foams & Tapes, SGPP, received by SGPP on February 17, 2016, acknowledged that SGPP designated all of the information previously submitted on the above mentioned dates as CBI. On March 7, 2016, SGPP resubmitted certain documents (Documents A thru G) and asserted that all highlighted and/or bracketed portions of the documents are CBI entitled to confidential treatment.

(3) SGPP's March 7, 2016 letter did not state that the information was provided to the EPA on a "voluntary" basis. SGPP's March 7, 2016 letter stated that the information "was submitted on a mandatory basis as it was demanded by the USEPA's Pesticides and Toxic Substances Branch in connection with an inspection of the McCaffrey St. facility on October 20, 2015." Because the information was not provided on "voluntary" basis, the EPA advised counsel for SGPP that SGPP did not need to explain whether and why disclosure of the information would tend to lessen the availability to the EPA of similar information in the future. Therefore, no such explanation is being provided.

The EPA's May 17, 2016 letter also requests the following information:

With respect to the remaining ***non-highlighted and/or bracketed information*** as delineated in SGPP's March 7, 2016 response and any additional information provided by the March 7, 2016 response letter, please comment on the following:

- (1) the portions of the information submitted on the aforementioned dates which are alleged to be entitled to confidential treatment;
- (2) the period of time for which confidential treatment is desired (e.g., until a certain date, until the occurrence of a specified event, or permanently);
- (3) the purpose for which the information was furnished to EPA and the approximate date of submission; if known;
- (4) whether a business confidentiality claim accompanied the information when it was received by EPA;
- (5) measures taken by the business to guard against undesired disclosure of the information to others;
- (6) the extent to which the information has been disclosed to others, and the precautions taken in connection therewith;
- (7) pertinent confidentiality determinations, if any, by EPA or other Federal agencies, and a copy of any such determination, or reference to it, if available;
- (8) whether disclosure of the information would be likely to result in substantial harmful effects on the business' position, and if so, what those effects would be, why they should be viewed as substantial and an explanation of the causal relationship between disclosure and such harmful effects; and
- (9) whether the information is voluntarily submitted information as defined in § 2.201(i), and if so, whether and why disclosure of the information would tend to lessen the availability to EPA of similar information in the future.

(EPA's May 17, 2016 letter at 2-3) (emphasis added).

SGPP responds as follows:

- (1) All non-highlighted and/or non-bracketed information submitted to the USEPA by SGPP on March 7, 2016 is not being claimed by SGPP as CBI entitled to confidential treatment.
- (2) SGPP does not request confidential treatment of the non-highlighted and/or non-bracketed information submitted to the USEPA by SGPP on March 7, 2016.

(3) The non-highlighted and/or non-bracketed information was provided to the USEPA in response to a written demand for information received by SGPP from the USEPA on February 16, 2016.

(4) A business confidentiality claim did not accompany the non-highlighted and/or non-bracketed information submitted to the USEPA by SGPP on March 7, 2016.

(5) SGPP has taken steps to guard against the undesired disclosure of the non-highlighted and/or non-bracketed information to others because the non-highlighted and/or bracketed information are parts of documents that contain CBI and, therefore, SGPP has taken steps to guard against the undesired disclosure of the documents generally. SGPP actively controls and maintains the secrecy of its manufacturing operations. This is accomplished in a number of ways, including, but not limited to, controlling non-employee entrance to the plants, requiring contractors who enter to the plants to agree not to disclose information regarding plant operations to others, and utilizing IT system access controls.

(6) Other than being provided to the USEPA in response to the request for information, the non-highlighted and/or non-bracketed information has not been disclosed to others.

(7) There have been no confidentiality determinations by the USEPA or other Federal agencies regarding the non-highlighted and/or non-bracketed information.

(8) Disclosure of the non-highlighted and/or non-bracketed information would not be likely to result in substantial harmful effects on SGPP's business position.

(9) The non-highlighted and/or bracketed information was not voluntarily submitted.

B. Explanation For Why Limited Portions of SGPP's Prior Written CBI Justifications Should Be Deemed CBI

SGPP's March 7, 2016 letter asserted that pursuant to 40 C.F.R. 2.205(c), the text of SGPP's March 7, 2016 letter that provided the justifications for SGPP's CBI designations also should be deemed confidential. Based on communications between our office and Karen Taylor of the EPA, it is our understanding that the EPA now requests that SGPP provide written explanations for why the portions of SGPP's March 7, 2016 letter providing justifications for SGPP's CBI designations should be considered confidential. SGPP has reviewed the written justifications in its March 7, 2016 letter and asserts that only the following information identified below is CBI that should not be disclosed to the public. All other portions of the written justifications for the CBI designations in SGPP's March 7, 2016 letter can be disclosed to the public.

By requiring that SGPP explain its prior justifications for designating certain information CBI in SGPP's March 7, 2016 letter, SGPP must further disclose more CBI below in this letter. Therefore, SGPP formally requests that the **bolded** portions of the text below in this letter be considered CBI as well.

CLAIMED CBI. REDACTED PENDING CBI DETERMINATION.

CLAIMED CBI. REDACTED PENDING CBI DETERMINATION.

(2) SGPP requests that the subject information maintain its CBI designation for as long as SGPP is conducting manufacturing operations at the McCaffrey Street and Liberty Street facilities.

(3) The subject information was supplied to the EPA on March 7, 2016 in response to a letter demanding that SGPP identify which information SGPP still considers to be CBI.

CLAIMED CBI. REDACTED PENDING CBI DETERMINATION.

CLAIMED CBI. REDACTED PENDING CBI DETERMINATION.

(5) SGPP actively controls and maintains the secrecy of its manufacturing operations. No one enters SGPP's plants without a badge. Non-employees are allowed into the plants only with prior approval of the business manager or general manager and are always accompanied by a SGPP employee. Contractors who are given access to SGPP's plants to complete projects such as maintenance work or installation and/or repair of existing equipment are vetted, approved, trained and work under NDAs which prohibit the contractors from disclosing information concerning SGPP's manufacturing operations. Similarly, SGPP's material suppliers enter supply agreements with SGPP under which SGPP and the respective supplier agree not to disclose the details of the particular supply arrangement. These supply agreements generally run for one year and are typically renewed for as long as the specific supply relationship is ongoing. Certain suppliers who provide materials to SGPP in connection with the development of a new product also enter NDAs with SGPP.

In addition to the protections mentioned above, SGPP also has IT system controls, including, log in for employees and controlled access to purchasing information for a limited number of employees. SGPP employees are all trained on and agree to employ the guidelines found in a document entitled General Principles of Contact and Action. Under these guidelines, employees receive training on the importance of maintaining the confidentiality of confidential business information. SGPP also conducts internal Intellectual Property training seminars which covers topics including how to maintain the confidentiality of business information.

(6) Other than being provided to the EPA in response to the request SGPP received from the EPA on February 17, 2016, the subject information has not been disclosed to others.

(7) There have been no confidentiality determinations by the USEPA or other Federal agencies regarding the subject information.

CLAIMED CBI. REDACTED PENDING CBI DETERMINATION.

CLAIMED CBI. REDACTED PENDING CBI DETERMINATION.

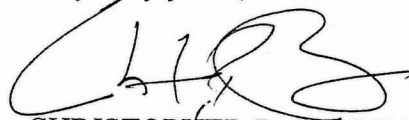
CLAIMED CBI. REDACTED PENDING CBI DETERMINATION.

- (9) The subject information was not voluntarily submitted to the EPA.

As mentioned, the above explanations required the disclosure of additional CBI. It should be self-evident that these explanations are CBI so there should be no further need for SGPP to provide explanations for its CBI justifications. In short, there should be no further need for letters from SGPP providing additional justifications because the justifications will be the same. Moreover, in communications between our office and Ms. Taylor of the EPA, we were advised that no additional explanations for SGPP's justifications would be required.

We request that the EPA provide a written notification regarding the EPA's decision on whether SGPP's CBI designations, including those related to portions of the March 7, 2016 letter as well as the bolded portions of this letter and the additional portion of Document D, will be upheld. If you have any questions or require any additional information please feel free to contact us.

Very truly yours,



CHRISTOPHER R. GIBSON

Enclosure
114298187v1